



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2003

Ms. Shannon G. Marty
Assistant General Counsel
Texas Worker's Compensation Commission
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

OR2003-8792

Dear Ms. Marty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195041.

The Texas Worker's Compensation Commission (the "commission") received a request for documents related to the requestor's interviews for several job postings. You seek to withhold four interview questions and the preferred answers used to evaluate applicants for an ombudsman position. You claim that this information is excepted from disclosure under section 552.122(b) of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a governmental body. The term "test item" includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 9 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 at 1 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

You inform us that the commission designs its interview questions and responses as a method of achieving a uniform assessment of the candidates for a position, and that the commission intends to re-use the interview questions and answers for subsequent postings for the same position or job classification. The questions which you seek to withhold assess an individual's knowledge in a particular area. You have also noted it would be difficult to develop different standardized questions and preferred answers each time the same position was posted and that failure to do so would unfairly advantage certain applicants in the interview process. Upon careful review of your representations and the submitted information, we conclude that the interview questions and answers at issue constitute "test items." The marked questions and preferred answers are consequently excepted from disclosure under section 552.122(b).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Steven W. Bartels". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID#195041

Enc. Submitted documents

c: Ms. Rosaline Johnson
P.O. Box 24525
Houston, Texas 77229
(w/o enclosures)